

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FOX NEWS NETWORK, LLC,

Plaintiff,

-v-

SECURITIES AND EXCHANGE COMMISSION,

Defendant.
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10-29-09

09 CV 2641 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

This Order presumes full familiarity with prior proceedings in this matter.

On October 9, 2009, this Court ordered the Securities and Exchange Commission to produce certain random documents from two Vaughn indices for this Court's in camera review. By letter dated October 16, 2009, the SEC requested, inter alia, additional time to produce documents from entries 198-201 on the Madoff Vaughn Index, asserting that their production posed a logistical hurdle because the documents were interspersed with other files and the total number of files is voluminous. See SEC Letter, 10/16/09, at 2. Since the SEC asserts that it would take no more than a week to organize and produce the documents in entries 198-201, had the SEC complied with this Court's October 9, 2009 Order it would have produced the documents by the time it submitted its October 16, 2009 letter. No further delay is justified. However, since the SEC also states that the total number of documents is voluminous, and since the Court only wishes to examine a random sample, the SEC is hereby ordered to

produce to the Court every fiftieth document in entries 198-201 of the Madoff Vaughn index by no later than Tuesday, November 3, 2009.

In its October 16 letter the SEC also questioned the need for the Court's in camera review of documents from Madoff Vaughn entries 202, 204, and 209, since the SEC's prior request to withhold production of these documents under Exemption 7(A) of the Freedom of Information Act ("FOIA") to prevent interference with an investigation being conducted by the Office of Inspector General ("OIG") has now been obviated by the conclusion of that investigation. SEC Letter, 10/16/09, at 3. Yet, at the same time, the SEC asserts the need for additional time to review the documents to determine if they may be withheld pursuant to other FOIA exemptions and further claims that review of these documents presents similar logistical difficulties because of their volume and location. But the OIG investigation was concluded on September 4, 2009, so the SEC has had more than ample time to review the documents and determine whether any other exemption applies. Again, however, the Court only wishes to review a random sample. Accordingly, the SEC is hereby ordered to produce every tenth document in entries 204, 207, and 209 of the Madoff Vaughn index to the Court for in camera review by no later than November 3, 2009, and to indicate at the same time what other exemptions, if any, it believes applies to any of the documents in entries 204, 207, and 209.

Once the Court has received all the documents that are being produced in camera, it will issue its rulings with respect to the

issues that led to that inspection by no later than November 17, 2009.

Finally, Fox News has identified six sets of documents from the OIG investigation that the SEC has agreed to review on an expedited basis. See SEC Letter, 10/16/09 at 4. The SEC has indicated it will provide the documents and/or Vaughn index for the first two sets by October 14 and October 31, 2009, and for the third and fourth sets by November 24, 2009. Id. Those dates are agreeable to the Court. However, as to the fifth and six sets, while the SEC asserts that it will review and either release or place on a Vaughn index those portions of the fifth and six sets of documents that were exhibits to the OIG Report by October 30, 2009, it will require an additional two months (i.e., until the end of the year) to process the remaining portions of the fifth and six sets. Id. at 5. This latter delay is unacceptable, given the seven weeks that have passed since the conclusion of the OIG investigation and the SEC's overall delay in processing the materials sought in this now long-pending action. Nor is the SEC's newfound reliance on seeking the input of the Department of Justice to determine whether the OIG documents should be withheld under Exemption 7(A) availing, see SEC Letter at 5-6, as the DOJ's informal input could have been sought weeks ago and the DOJ is not a party to this action and has not formally intervened. Accordingly, the SEC is hereby ordered to produce the requisite documents and/or Vaughn index regarding the remaining documents in the fifth and six sets by November 30, 2009.

The Court hereby places the SEC on notice that the dates set forth in this Order will not be subject to further extensions and will be strictly enforced.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
October 28, 2009